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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/556,439	04/24/2000	John Kenneth Amick	8006-0019-13	7593
7590 01/04/2006			EXAMINER	
HARVEY LUNENFELD 8 PATRICIAN DRIVE EAST NORTHPORT, NY 11731			THOMPSON, MARC D	
			ART UNIT	PAPER NUMBER
			2144	
DATE MAILED: 01/04/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/556,439

Applicant(s)

AMICK, JOHN KENNETH

Examiner

Marc D. Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This application has been reassigned to a new Examiner. See Conclusion section below, for new Examiner contact information.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/20/2005 has been entered.
3. Claims 32-70 are now pending.

#### ***Priority***

4. This application claims priority to provisional application 60/130,650. The effective filing date for those claims which have proper support in the provisional application is 4/23/1999.
5. The newly submitted substitute specification seemingly improperly claims priority to related application 09/266,704 which has matured into U.S. Patent Number 6,088,437 in the first section of the specification. No formal claim for priority is made to this document, and the originally filed specification merely references this document as "related". Clarification of priority claims is required in response to this action to properly ascertain the effective filing date of the present application.

***Specification***

6. The specification is objected to for the following reasons:

a. The first paragraph of the specification claims benefit of earlier filings and seemingly multiple documents, namely patent application number 09/266,724, and U.S. Patent Number 6,088,437. It is noted these two documents are one and the same, potentially misleading and confusing a reader, as well as incorporating the subject matter by reference multiple times.

b. The specification cites these two documents numerous times (i.e., inter alia, Pages 2 and 4), further adding confusion of the alleged distinction between the documents. Synchronization of the actual citations of these documents is required, preferably using the United States Patent Number to which the document has matured.

c. The term/acronym "LATA" is used without proper citation or definition in numerous section of the specification. Applicant is required to clarify the use of said terminology so that the bounds of its usage is known and established without the addition of new matter. For interpretation purposes, LATA is construed as an acronym for "local access and transport area" relating to a geographical area designated by a telephone company, typically defined by a particular area code.

7. Correction is required.

***Drawings***

8. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings seem detached from, and generally not related to the functional

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methodology of the software constructed claimed invention. Further, the drawings do not facilitate understanding of the invention as described and claimed.

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

9. Since the crux of the invention seems to be the software arrangement of functional elements acting to route call traffic over alternate routes based on an "error condition" (i.e., no answer or busy indication), these features should be evident in the drawings. Thus, the drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the arrangement and functional behavior of the intended software functionality and the hardware which is configured and controlled must be shown in the drawings or the feature(s) canceled from the claim(s). No new matter should be entered.

***Double Patenting***

10. No double patent rejection(s) are deemed proper at this time.

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 32-70 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

13. The claimed invention uses overly broad and non-descriptive labels for intangible system components, such as “virtual office environment”, “virtual office environment management system”, “second client management system”, “at least one address of the at least one virtual office environment”, “issuing at least one instruction to at least one telecommunication carrier”, etc. None of these elements are described in sufficient detail to enable one skilled in the art at the time of invention to make and use the invention as claimed. Further, undue experimentation would be required to provide the claimed functionality, including but not limited to the construction and maintenance of a virtual office environment, the usage of management system(s) (what is managed, how it is managed, and what management actually is), and the actual issuing of instruction(s) to telecommunication carrier(s) to route communications. These

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functional, methodological steps are not trivial, and require sufficient detail to properly determine how these elements function and what function they perform.

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 32-70 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

16. All of the claims recite "...in the absence of an error condition and at least during the error condition..." in the first few lines of the independent base claims. It is noted that "the error condition" minimally lacks antecedent basis, since no error condition has been positively recited. Further, any metes and bounds of this alleged "error condition" must be presumed, since the specification defines this "error condition" to be a "busy or no answer condition" relating to phone call connectivity. The breadth of the use of the term "error condition" lends itself to interpretation(s) which is outside the commensurate scope of the present application.

17. The claims recite "at least one object comprising at least one first object" proximal to Lines 11-12 of the independent claims. No second or subsequent object is ever recited. First, this seemingly redundant, circular definition removes any definitive meaning of the use of software objects as functional application modules as part of the claimed invention.

18. The claims further recite "at least one second client management system" without ever mentioning a first client management system. First, it is unclear how many client management systems are intended to be claimed, rendering the claims indefinite. Second, it is unclear

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whether there is an intention to have multiple management systems, or management systems for multiple clients.

19. Claims 37 and 67 recite “the at least one virtual office environment comprises at least one virtual office”, and claims 38 and 68 recite “the at least one virtual office environment comprises at least one work place” in Line 2 of the claims. It is unclear what these limitations are describing, and no ascertainable meets and bounds can be easily understood or derived.

20. Claim 45 recites a “fourth object” without reciting a “third object”, and seems identical to claim 39, claiming said “third object” having the same function.

21. Claim 47 recites “the at least one object comprises at least one mailbox” in Line 2 of the claim. Use of the term of “mailbox” is unqualified since no express definition of the word is provided in the claim rendering the claim indefinite due to the inability to determine how a software object can comprise a “mailbox”. Claim 48 inherits this deficiency.

22. Claims 54 and 55 recite “the at least one object manages recording” and “the at least one object manages erasing”, respectively. It is unclear what function these respective objects actually have and what is being recorded/erased.

23. The claims are generally confusing, and are making understanding and isolation of any inventive concepts very difficult. Further, there are no qualifying statements made by Applicant to describe the system intended to be encompassed by the claimed subject matter. Considerable modification, simplification, and clarification of the terms, elements, and functional methodological steps as used in the claims is required in order to understand the scope of the claimed subject matter.



***Claim Rejections - 35 USC § 102***

24. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

25. Claims 32-70 are rejected under 35 U.S.C. §102(e) as being anticipated by Fuller et al.

(U.S. Patent Number 6,026,149), hereinafter referred to as Fuller.

26. Fuller disclosed connection of two terminals on a telephony network (non-error condition, as claimed) and the invocation of a “failed call procedure” when connection is not possible (namely, due to a no-answer or busy condition)(error condition, as claimed). See, inter alia, Column 1, Lines 50-53, Column 15, Line 60 through Column 16, Line 19, and Column 30, Line 36 through Column 31, Line 14. The system performed a wide variety of call processing including direct call forwarding, message center management and operation, branch routing, and “meet-me” (paging) in Column 5, Line 40 through Column 9, Line 48. The “virtual office environment” and “management system” was met by Fuller since the integration of numerous locations, phone numbers, and receptive devices was fully supported and widely known in the art, providing a “virtual” presence and address/location management independent from the actual terminal location/network point of presence, including branch routing, scheduling, specific addressing requirements, and application modes. See, inter alia, Figures 7 and 8. The provision for menus and communicating menus for user selection and system functional behavior based on

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user input in response to generated and communicated menus was clearly evident in the entirety of the Fuller system.

27. In short, Fuller fully described functionality which routed information flows during the lack of an error condition (i.e., busy/no answer condition) as well as handing routing of information using differing carriers and trunks during an error condition of this type, precisely as claimed. The inclusion of more terminals (agents) to which calls/communication was routed was clearly evident. The provision for a "virtual office", "virtual office environment" and "at least one workplace" are not held to hold any patentable distinction from the system of Fuller.

28. Since Fuller disclosed the functional behavior and operating elements of the claimed invention in claims 32-70, these claims are rejected.

#### ***Response to Arguments***

29. The arguments presented by Applicant in the response, received on 4/20/2005, are not considered persuasive.

30. Applicant provides no arguments in regard to any outstanding issues of the application.

31. Applicant asserts that "making individual arguments by the Applicant with respect to each of the Examiner's claim rejections [is] unnecessary and unwarranted." See Response, received 4/20/2005, Page 15. Applicant's lack of arguments fail to comply with 37 CFR 1.111(b) and (c) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the prior art of record; they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the

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references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

32. It is noted the invention seems to be an object oriented software library of various functions which operate to route phone calls, typical of "call centers", "contact centers", and message centers for automatic call distribution (ACD), widely implemented and well known in the art at the time of filing. The modular approach to providing services, call routing, and dynamic construction of company specific application logic was likewise well known. Likewise, the "virtual" location of connected terminals and inclusion of language related to a "virtual office environment" and "work place" seem to relate to physical/logical proximity designations which are irrelevant to the operation of the system as a whole. Numerous technologies provide this transparent locational awareness and connectivity, including virtual private networks, clustering, and distributed processing. Any immediate patentable feature determination will have to be substantially argued and qualified in response to this action.

#### ***Conclusion***

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

34. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc D. Thompson whose telephone number is 571-272-3932. The examiner can normally be reached on Monday-Friday, 9am-4pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, David Wiley can be reached

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at 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned has recently changed, and is now 571-273-8300.

35. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MARC D. THOMPSON  
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Art Unit 2144